

File

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
in and for the STATE OF UTAH

IN THE MATTER OF PROTEST TO FINAL)	
APPROVAL OF THE NOTICE OF INTENT TO)	
MINE, RANCHERS EXPLORATION AND)	ORDER
DEVELOPMENT CORPORATION'S ESCALANTE)	NO. ACT/021/004
SILVER MINE, SECTION 2, TOWNSHIP 36)	
SOUTH, RANGE 17 WEST, SLBM, IRON)	
COUNTY, UTAH.)	

This cause came on for hearing before this Board at 10:00 a.m. on Wednesday, January 23, 1980, in Room 232 of the Holiday Inn, 1659 West North Temple, Salt Lake City, Utah. The following Board members were present:

- Charles R. Henderson, Chairman
- Edward T. Beck, Member
- E. Steele McIntyre, Member
- John Bell, Member
- Raymond C. Juvelin, Member

Also present and representing the Division were:

- Cleon B. Feight, Director, Division of Oil, Gas and Mining
- Thalia R. Busby, Administrative Assistant, Division of Oil, Gas and Mining
- Ronald W. Daniels, Mined Land Coordinator, Division of Oil, Gas and Mining
- Mike Thompson, Engineering Geologist, Division of Oil, Gas and Mining
- Tom Suchoski, Hydrologist, Division of Oil, Gas and Mining
- Mary Ann Wright, Biologist, Division of Oil, Gas and Mining
- Jim Smith, Soils Specialist, Division of Oil, Gas and Mining
- Denise Dragoo, Special Assistant Attorney General, Division of Oil,
Gas and Mining

Appearances were made as follows:

For Rancher's Exploration and Development Corporation:

- Joseph Novak, Attorney at Law
- Mark R. Welch, Chief Engineer
- Herbert Campbell, Vice President
- William Greenslade, Consulting Engineer with Dames & Moore

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For Protestants:

Hans Chamberlane, Attorney at Law

Michael W. Brown, Representing the Farmers and Water users of
Escalante Valley

Thomas E. Bingham, Director of Public Policy for the Utah Farm
Bureau Federation

For the State Division of Water Rights:

Dee Hansen, State Engineer

NOW THEREFORE, the Board having heard the testimony of each party
and having considered the evidence, and being fully advised in the
premises, now makes and enters the following:

FINDINGS OF FACT

1. Proper procedures for notice and publication of this matter were followed in accordance with the Utah Mined Land Reclamation Act (Chapter 8, Title 40, Utah Code Annotated).
2. The Board has jurisdiction over this matter under the Utah Mined Land Reclamation Act (Chapter 8, Title 40, Utah Code Annotated).
3. Tentative approval to commence pilot underground mining operations at the Escalante Silver Mine was issued by the Division of Oil, Gas and Mining on September 27, 1979 and published notice of tentative approval was given on November 1, 1979.
4. A formal protest to the issuance of final approval was received by the Division on December 3, 1979 and set for hearing before the Board on January 23, 1980 in Room 232 of the Airport-Holiday Inn, 1659 West North Temple, Salt Lake City, Utah. The hearing was set to specifically consider citizen complaints concerning the alleged disruption, dewatering and relocation of underground water by the proposed mining operation.
5. The issues before the Board are as follows:
 1. Does the Board have jurisdiction over a protest filed later than 30 days after publication of tentative approval?

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2. Does the Board have jurisdiction over the substance of the protest to approval of proposed operations at the Escalante Silver Mine?

3. Will the proposed mining operations cause disruption, dewatering and relocation of underground water supplies to the detriment of the farmers and citizens of Escalante Valley, Utah?

CONCLUSIONS OF LAW

1. With respect to the issue of timely filing of protest to the tentative approval of pilot mining operations at the Escalante Silver Mine, the Board finds the citizen protest to be valid and timely under Section 40-8-13(4) Utah Code Annotated (1953). The pertinent part of that provision states:

. . . Any person or agency aggrieved by the tentative decision may file a written protest with the Division, setting forth factual reasons for his complaint. If no factual written protests are received by the Division within 30 days after the last date of publication, the tentative decision on the notice of intention shall become final and the operator will be so notified. If written objections of substance are received, a hearing shall be held before the Board in accordance with section 40-8-8, following which the Board shall issue its decision.

The date of final publication of tentative approval was November 1, 1979 and the citizen's complaint was received by the Division on December 3, 1979. Applying the Utah Rules of Civil Procedure, Rule 6, the complaint was timely received. Rule 6 provides that in computing any period of time:

. . . the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. (emphasis added)

Applying Rule 6 to the matter before the Board, the statutory 30 day comment period set forth at Section 40-8-13(4) Utah Code Annotated (1953) runs from November 2, 1979 through December 2, 1979 (a Sunday) to December 3, 1979. Therefore, the citizen's complaint was timely received and the Board has jurisdiction over this matter.

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2. With respect to the matter of substantive jurisdiction over the issues raised by the citizen complaint, the Board determines that the matter of the alleged contamination, disruption and relocation of underground water supplies by the proposed mining operation is indeed a matter within the purview of its jurisdiction. Section 40-8-13(4) allows any person aggrieved by the tentative approval of a notice of intent to mine to file a written protest with the Division and to receive a hearing before the Board. The alleged injuries to underground water supplies raised by the citizens are sufficient to qualify such citizens as "aggrieved" parties. Section 40-8-12, Utah Code Annotated (1953) sets forth the objectives of the Mined Land Reclamation Act specifically including the objective:

(b) To minimize or prevent present and future on-site or off-site environmental degradation caused by mining operations to the ecologic and hydrologic regimes and to meet other pertinent state and federal regulations regarding air and water quality standards and health and safety criteria. (emphasis added)

In addition, Section 40-8-12(c), Utah Code Annotated sets forth the general objective of minimization of hazards to public safety and welfare.

Therefore, the Board determines that allegations concerning the impact of the proposed mining operation upon contamination, dewatering and relocation of underground water supplies was properly before the Board and well within the ambit of their statutory jurisdiction under the Mined Land Reclamation Act.

3. With respect to the factual issue before the Board concerning the validity of the citizen protest, the Board determines that the citizen's have failed to establish that the harm alleged in their complaint will actually occur as the result of the pilot program proposed by Rancher's Exploration and Development Corporation at the Escalante Silver Mine. While the citizens and farmers of Escalante Valley adequately set forth their concern that the proposed pilot mining operation would endanger irrigation systems dependent on underground water supplies, the citizens

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offered no technical studies or evidence to support their concerns. Rancher's Exploration and Development Corporation presented testimony concerning the results of a study prepared by Dames & Moore consulting engineers relative to the dewatering of the Escalante Silver Mine. Testimony revealed that pumping operations during pilot operations will have little net impact upon the underground water supply used by the farmers during the irrigation season. Testimony also revealed that the continued testing of impacts upon the water supply would continue throughout the pilot mining operations and that these tests were necessary to establish the feasibility of mining operations at the Escalante Silver Mine.

Therefore, in that the notice of intent at issue before the Board concerns approval only for a study period of eight and one half months and without such study period the actual impact of dewatering activities upon the water supply of Escalante Valley will never be documented, the Board determines that the pilot mining operation be approved. However, the Board's approval extends only to the pilot operation at the Escalante Silver Mine and a new application to mine must be submitted to the Division and approved prior to commencement of actual mining operations. Such submission must be accompanied by a dewatering study which documents the impacts of the proposed operation on the underground water supply of Escalante Valley.

Therefore, it is Ordered by the Board of Oil, Gas and Mining that:

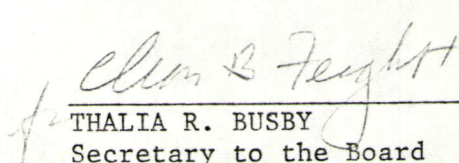
1. The Board has jurisdiction over this matter under Section 40-8-13(4) and the citizens complaint in this matter was timely filed thereunder.
2. The Board has substantive jurisdiction concerning the allegations contained in the citizen's complaint in this matter under the Mined Land Reclamation Act.
3. The Notice of Intent to Mine submitted by Rancher's Exploration and Development Corporation is approved with regard to pilot operations at the Escalante Silver Mine.

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4. Rancher's Exploration and Development Corporation must submit a new notice of intent to mine before actual mining operations commence at the Escalante Silver Mine and such application for notice of intent must be accompanied by hydrologic studies concerning the impact of mining operations on the underground water supply of Escalante Valley.

SO ORDERED this 24th day of January, 1980.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING



THALIA R. BUSBY
Secretary to the Board